



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.105 OF 2025

Shri Vishal s/o Mastbahadur Mall
Vs.
Smt. Rashmi w/o Vishal Mall and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Vaishali Khadekar, Counsel along with Mr. Ayush Gawande, Counsel
for the applicant.
None for the respondents.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/08/2025

1. Heard finally to the learned Counsel for the applicant. Despite the service of the notice and placing on record the Vakalatnama, none present for the respondents.

2. By this revision application, the applicant has challenged the order of grant of maintenance by the learned Family Court No.4, Nagpur granting maintenance at the rate of Rs.4,000/- each in all Rs.12,000/- to the respondents.

3. The applicant is the husband of the respondent No.1 and respondent Nos.2 and 3 are their children. The marriage of the applicant and respondent No.1 was solemnized as per Hindu rites and customs at Umred. From the said wedlock, the applicant and the respondent No.1 are having two

daughters respondent Nos.2 and 3. At the time of marriage, the applicant was working at South-East Central Railway, Raipur and thereafter in the year 2008, he was transferred to the South-East Central Railway, Tumsar. The respondent No.1 after marriage, resumed the cohabitation at the matrimonial house at Jaripatka, Nagpur. It is alleged that she was treated well for some days and thereafter, she was ill-treated and therefore, she constrained to leave the matrimonial house and filed an application for grant of maintenance. The learned Family Court has granted maintenance at the rate of Rs.4,000/- each, without considering whether the notice is served upon the applicant or not. The present revision application challenging the order of grant of maintenance mainly on the ground that the service of the notice was not there. The notice was issued on the address of Nagpur, whereas the applicant was serving at Tumsar at the relevant time. Thus, there was no proper service and first time, the applicant came to know about the pendency of the petition, when he received a notice in an execution petition. Thus, the *ex parte* order was passed by the Family Court without considering that there was no proper service of notice and therefore, it was prayed that the original petition No. E-248/2020 filed under Section 125 of the Code of Criminal Procedure be remanded back to the Family Court, after giving an opportunity to the present applicant to resist the

application and by filing an affidavit of assets and liabilities before the trial Court.

4. Heard learned Counsel for the applicant. She reiterated the said contentions and submitted that the learned Family Court has noted that the respondent/applicant was duly served with the notice at Exh.11 and he fails to appear. Thus, it is pertinent to note that the notice was issued on the address of Nagpur. She pointed out from the title clause that in the petition, the address of the present applicant was mentioned as "Plot No.48, Nirmal Colony, Nara Road, Jaripatka, Nagpur. She further invited my attention towards the pleadings of the respondent No.1 that she specifically stated that the applicant is working in the railway department and getting salary of Rs.60,000/-. In fact, the present applicant was posted at Tumsar at the relevant time. The notice Annexure – 8 on page No. 52 shows that the execution notice was issued on the address i.e. Railway Quarter No.93/3, Tumsar Road, District Bhandara. Thus, there is a substance in the contention of the learned Counsel for the applicant that initially, there was no proper service in the main petition and therefore, the applicant could not resist the claim by filing his written statement and appearing before the Court. Therefore, the opportunity requires to be given to the present applicant to resist the claim by filing his written statement. Admittedly, the notice service in the main

petition in E-Petition No.248/2020 was on the address of given in the petition of Nagpur. Thus, there was opportunity for the present applicant to resist the petition and file his assets and liabilities which is requirement in the matrimonial petition. In view of that, the Misc. Criminal Application Petition No.E-248/2020 is to be remanded back to the Family Court, Nagpur for hearing.

5. The Family Court, Nagpur shall give an opportunity to the present applicant to file his written statement and resist the application.

6. In the meantime, the applicant shall continue to pay the maintenance granted by the Family Court to the present respondents as an interim maintenance. With this, the revision application is **disposed of**.

(URMILA JOSHI-PHALKE, J.)